

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-CV-10215-GAO

ANDREW JEUNE,  
Plaintiff

v.

OFFICER JOHN MCELROY, OFFICER  
CARLOS AQUINO, OFFICER DANIEL  
MCNEIL, OFFICER FRANK GREENRIDGE,  
LIEUTENANT TIMOTHY HOGAN, and the  
CITY OF CAMBRIDGE,  
Defendants

**ANSWER OF DEFENDANT OFFICER DANIEL  
MCNEIL TO PLAINTIFF'S COMPLAINT AND JURY CLAIM**

1. The allegations in the first sentence of this paragraph state a legal conclusion, to which no response is required. The remaining allegations are denied.
2. This paragraph states a legal conclusion to which no response is required.
3. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 and, therefore, denies the same.
4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 and, therefore, denies same.
5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 and, therefore, denies same.
6. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 and, therefore, denies same.
7. Admitted.

8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 and, therefore, denies same.

9. Admitted.

10. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set for in paragraph 10 and, therefore, denies same.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 and, therefore, denies same.

12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 and, therefore, denies same.

13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 and, therefore, denies same.

14. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 and, therefore, denies same.

15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 and, therefore, denies same.

16. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 and, therefore, denies same.

17. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 and, therefore, denies same.

18. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 and, therefore, denies same.

19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 and, therefore, denies same.

20. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 and, therefore, denies same.

21. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 and, therefore, denies same.

22. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 and, therefore, denies same.

23. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 and, therefore, denies same.

24. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 and, therefore, denies same.

25. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 and, therefore, denies same.

26. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 and, therefore, denies same.

27. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 and, therefore, denies same.

28. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 and, therefore, denies same.

29. Admitted

30. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 and, therefore, denies same.

31. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 and, therefore, denies same.

32. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 and, therefore, denies same.

33. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 and, therefore, denies same.

34. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 and, therefore, denies same.

35. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 35 and, therefore, denies same.

36. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36 and, therefore, denies same.

37. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37 and, therefore, denies same.

38. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 and, therefore, denies same.

39. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 and, therefore, denies same.

40. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40 and, therefore, denies same.

41. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41 and, therefore, denies same.

42. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 42 and, therefore, denies same.

43. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 43 and, therefore, denies same.

44. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 44 and, therefore, denies same.

#### **COUNT I**

45. The defendant repeats his responses to the allegations contained in paragraphs 1 through 44 above as if each were fully set forth herein.

46. Denied.

#### **COUNT II**

47. The defendant repeats his responses to the allegations contained in paragraphs 1 through 46 above as if each were fully set forth herein.

48. Denied.

#### **COUNT III**

49. The defendant repeats his responses to the allegations contained in paragraphs 1 through 48 above as if each were fully set forth herein.

50. Denied.

(a) Denied.

(b) Denied.

(c) Denied.

(d) Denied.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's own actions, in attempting to break and enter a building, were the cause of plaintiff's arrest.

**THIRD AFFIRMATIVE DEFENSE**

At all times defendant exercised due care and acted in good faith.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's detainment and arrest were based upon probable cause and were reasonable under the circumstances.

**FIFTH AFFIRMATIVE DEFENSE**

The Complaint is barred because the defendant's actions were undertaken in good faith and were objectively reasonable.

**SIXTH AFFIRMATIVE DEFENSE**

If force was applied to the plaintiff, it was necessarily applied in good faith to maintain and restore discipline and with no more force than was necessary under the circumstances.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are wholly insubstantial, frivolous and not advanced in good faith.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant acted without malice or ulterior motive.

**NINTH AFFIRMATIVE DEFENSE**

Defendant acted without threats, intimidation or coercion so there is no liability under Court II.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his damages, if any.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff was arrested on the positive identification of a coherent and credible witness.

**TWELVTH AFFIRMATIVE DEFENSE**

Defendant has qualified immunity for his actions.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff was arrested on probable cause.

**DEFENDANT RESERVES THE RIGHT TO ASSERT FURTHER  
AFFIRMATIVE DEFENSES UPON THE COMPLETION OF DISCOVERY.**

Wherefore, Defendant demands judgment:

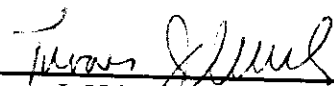
1. Dismissing the Complaint on its merits;
2. For his costs, disbursements and reasonable attorney's fees in defense of this action; and
3. For such other and further relief as this Court deems just and proper.

**Demand for Jury Trial**

Defendant demands a jury trial on all issues so triable.

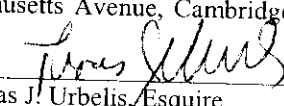
Date: April 26, 2005

Respectfully submitted,  
OFFICER DANIEL MCNEIL  
By his attorney,

  
\_\_\_\_\_  
Thomas J. Urbelis, Esquire  
BBO #506560  
Urbelis & Fieldsteel, LLP  
155 Federal Street  
Boston, MA 02110  
(617) 338-2200

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing by mailing same, postage prepaid to Attorney Stephen Hrones, Hrones & Garrity, Lewis Wharf – Bay 232, Boston, MA 02110-3927 and Attorney Arthur J. Goldberg, City of Cambridge, Office of the Solicitor, 795 Massachusetts Avenue, Cambridge, MA 02139 on this 26<sup>th</sup> day of April, 2005.

  
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Thomas J. Urbelis, Esquire